IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 102 of 2002()

CC.455/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER: ACCUSED:

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1. P.K.MADHAVAN, S/O. ROHINA AMMA,
   RESIDING AT N.G.O. QUARTERS, KANNUR.

2. P.K.ROHINII, `PRASADAM',
   POORAKKOTTARATHIL, MAYYIL, KANNUR.

3. P.K.RUGMINI, D/O. RAVEENDRAN,
   KANDATHIL MAVILE VEETTIL, KUTTIATTOOR, KANNUR.

BY ADV. SRI.M.K.SUMOD

RESPONDENTS: COMPLAINANTS:

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1. M.K.KARUNAKARA KURUP, SREE NILAYAM,
   NEAR CHIRAKKAL WEAVERS CO-OPERATIVE SOCIETY,
   P.O.BALIAPATTAM, KANNUR.

2. STATE OF KERALA, REP.BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.A.MOHAMED MUSTAQUE
PUBLIC PROSECUTOR SRI. C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

Crl.M.C. NO. 102 OF 2002

Dated this the 13th day of September, 2007

ORDER

Petitioners are the accused in C.C. No.455/01 pending before the Judicial First Class Magistrate (No.II), Kannur with respect to the offence punishable under Section 294 (b), 341, 427, 506(1), 392 r/w 34 of Indian Penal Code.

2. Petitioners are the brother, mother and sister in law (the wife of the brother) who are the accused in C.C. 455/01 of one Remadevi. Remadevi's husband Suresh Babu committed suicide. The defacto complainant is the father of the deceased Suresh Babu. According to the petitioners, Suresh Babu commit suicide on account of the harassment of the defacto complainant and his another Son Prakasan when they were living in the house of Remadevi's husband, the deceased Suresh Babu, along with the parents of the deceased Suresh Babu. Petitioners have produced a copy of the title deed in this regard. After the death of Suresh Babu, it is admitted that there was dispute with the defacto complainant regarding the assets of Suresh Babu. The

allegation is that the respondent tried to take forcibly the possession of the house. Annexure A(1) is the FIR registered on the complaint of Remadevi alleging offences under Section 498 (A), 379 r/w 34 of IPC against the defacto complainant and his son. Remadevi has also instituted a civil suit. Annexure A(7) is the copy of the order in I.A in the above suit, O.S. 42/01 wherein the defendants are the defacto complainant and his son Prakashan. Annexure A6 is the revenue receipt with respect to the house in the name of Remadevi. Annexure A(2) is the copy of the complaint filed by the respondent against the petitioners herein alleging that on the 12th day of the death of Suresh Babu petitioners came to the house in which the defacto complainant, Remadevi and the deceased Suresh Babu were residing and that accused No.1 threatened and abused him and pressed his neck and have forcibly taken away Rs. 45,000/-and other documents and gold ornaments that was kept in the shelf and destroyed flower pot etc.

3. Learned counsel for the petitioners has submitted that at the time of the incident, the civil suit and the criminal proceedings initiated by Remadevi was pending has not been

established as the dates of the above proceedings which were initiated is not available from the records produced.

In the circumstances, I find that the appropriate remedy is not to invoke Section 482. Learned counsel for the petitioners has sought for a direction that the petitioner may be allowed to file a petition for discharge before the court below. Petitioners may do so and the court below shall consider the same.

The Crl. M.C. is accordingly disposed of as above.

K.R.UDAYABHANU, JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007